

**POLICY AND IMPLEMENTATION
STRATEGIES FOR ARMY LAND ASSET
CONVERSION AND LAND EXCHANGE**

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POLICY AND IMPLEMENTATION STRATEGIES FOR ARMY LAND ASSET CONVERSION AND LAND EXCHANGE

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May 1997

ABSTRACT

Federal land management agencies have authority to initiate or cooperate in exchanges of land and interests, lease lands, enter into agreements regarding the use of land, and allow use by permit. In an era of reduced spending, the Army and DoD may benefit from exploring policy options such as these for acquiring lands through means other than the traditional fee-simple purchase. This paper explores a number of land acquisition alternatives and concludes that a “window of opportunity” exists for the Army and DoD to work cooperatively with other land management agencies to improve military training and resource conservation opportunities, while minimizing cost.

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ACRONYMS

BLM	Bureau of Land Management
DoD	Department of Defense
EA	Environmental Assessment
EIS	Environmental Impact Statement
FLEFA	Federal Land Exchange Facilitation
FLPMA	Federal Land Policy and Management Act
FPASA	Federal Property and Administrative Services Act
FSM	Forest Service Manual
NEPA	National Environmental Policy Act
OGC	Office of General Council
SAIC	Science Applications International Corporation
USDA	United States Department of Agriculture
USDI	United States Department of Interior

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CHAPTER 1. POLICY AND IMPLEMENTATION STRATEGIES FOR ARMY LAND ASSET CONVERSION AND LAND EXCHANGE

1.1 Purpose of Report

To explore methods to improve public land management cost efficiency, public service effectiveness, interagency cooperation, and lands available to meet DoD training requirements.

1.2 Summary

Based upon federal statutes and working examples, DoD can conclude that federal land managing agencies have authority to initiate or cooperate in exchanges of land and interests, lease lands, agreements to use of land (memoranda of understanding), and allow use by permit. While there is legal structure to accomplish the acquisition of needed training lands, there appears to be little public or political support to maintain an active military presence on these lands. The management budgets of federal land managing agencies have been severely reduced as part of the broader effort to reduce the cost of government. This fact provides a "window of opportunity" for the DoD to work cooperatively with the land managing agencies to improve training opportunities, public service and resource protection opportunities in an era of reduced spending.

1.3 Policy Status

Policy relating to cooperation in resource and land matters varies from agency to agency, but overall, policy generally encourages cooperative management efforts. In truth, intergovernmental cooperation varies from excellent to dismal, depending on local relationships and bureaucratic procedures and process delays. Agency and Department manuals, handbooks, memorandums, and regulations provide a means by which most land use agreements can be either implemented or impeded. The most used interagency cooperative tool has historically been the *memorandum of understanding*. The memorandum of understanding provides the cooperating agencies with a short uncluttered document that outlines the purpose, area involved in the agreement, period of time the agreement will be in force, monitoring requirements, and the specific general responsibilities of all parties, including the financial arrangements.

At the present time, there are a number of examples of good and bad intergovernmental military training relationships that exist among DoD lands and adjacent federal and state lands. Relationships with public land managing agencies also vary considerably for state National Guard units. Many excellent local relations exist as a result of Army National Guard and Reserve Units building facilities on resource agency properties during their annual summer training, for example, bridges or roads constructed by engineering units on Bureau of Land Management (BLM) and Forest Service managed lands.

In most instances, non-impact activities, included within a memorandum of understanding, will not require an environmental statement. As an example, if non-DoD land (resource agency managed property) was used for ordnance impact, an environmental impact statement would be required, however, if the ordnance was fired from non-DoD land and impacted on traditional military

impact areas, the likelihood of an environmental statement would be significantly reduced. Firing range safety requirements and prohibition of civilian access would be intensified while using non-DoD lands for live firing. The least controversial use of non-DoD lands would be for maneuver purposes.

1.4 Public Involvement and Support

It should be obvious that the public would take particular interest in any program that may restrict their access or use of public lands. The political backlash that may result from a program that is perceived to be covert could result in a quick end to a land use proposal. The public should be informed and involved at all phases of an interagency effort. An agreement that would publicly state the plan and safeguards for public access to lands the public has traditionally used would be prudent. If some DoD lands, not presently available, were made accessible under an agreement, public support would be increased significantly.

1.5 Potential Areas of Cooperation

Military lands, particularly in the western and southern United States are often adjacent to other federal lands. Some military installations are immediately adjacent to state managed property. There is some duplication of resource programs, technical expertise and physical facilities on adjacent jurisdictions. Every agency has its own strengths and weaknesses. While the following is not an all-inclusive list, it indicates possible areas of cooperation and the agency with the highest perceived level of expertise:

- Communication equipment and maintenance (military)
- Resource management technical expertise (resource agencies)
 - Wildlife Biologists (surveys, management plans, endangered species management, etc.)
 - Watershed Hydrologists (stabilization of watersheds, hydrological surveys, etc.)
 - Archaeologists (historical and prehistory survey, etc.)
 - Foresters (timber appraisals, harvesting plans, regeneration expertise, etc.)
 - Range Conservationists (grassland management, grazing plans, etc.)
 - Soil Scientists (soil surveys, trafficability analysis, dust abatement, etc.)
 - Sanitation Engineers (field sanitation, small waste disposal facilities, etc.)
 - Entomologists (insect control programs, damage surveys, etc.)
 - Plant Pathologists (plant disease control, disease survey, etc.)
 - Resource Interpreters (public communications, resource enhancement, etc.)
 - Landscape Architects (landscape design, facility design, landscape enhancement, etc.)
 - Recreation Planners (facility design, recreation management, programming, etc.)
- Logistical Skills (military) for forest fire fighting and other natural emergencies
 - Ground Transportation (provide transportation support for crews, logistical support, etc.)

- Field Kitchens (meals for crews fighting fire and other natural disaster events)
- Air Transportation (transport national fire fighting assets long distances)
- Communication networks (provide communications in areas with difficult transmission)
- Heavy construction equipment (construct fire lines, helipads, etc)
- Medical Support (provide emergency medical services)
- Fire Fighting Expertise (resource agencies)
 - Fire Fighting Personnel (military and resource agency cooperation)
- Search and Rescue Assistance (military)
- Outdoor Recreation Facility Design (resource agencies)
- Facility Construction (military, i.e., roads, bridges, etc.)
- Civil Engineering (military and resource agencies)
- Aerial Photography for use in resource activities (military)
- Mapping Services (military)
- Drug Interdiction (military)

1.6 Alternatives

Contemporary military training needs expanded land bases that presently are not available on most military lands to effectively provide realistic training venues. With environmental safeguards, adequate protection of natural and cultural resources, and a keen sensitivity to public use and access, public lands can be effectively used for this purpose. A cooperative effort will increase the military readiness and resource agency's ability to serve the public interests with expanded programs and efficient and effective use of their financial resources.

Analysis of Alternatives:

Alternatives	Description	Positive Aspects	Negative Aspects
A. Introduce Enabling Legislation	Draft Legislation to transfer jurisdiction of needed federal properties to the DoD for training and other purposes	Provides the military with needed lands Legislative text could exempt military from having to produce a yearly environmental statement	Strong resistance from Resource agencies and general public Agencies would likely bring about strong political opposition through third parties
B Executive Order	Draft an Executive Order for President to sign transferring lands or requiring resource agencies to cooperate with military use.	Keeps things relatively clean and within the Executive branch of government	President will be uncomfortable signing an order if there is conflict between the agencies involved. If any sizable amount of land is included, Congress will demand oversight hearings.
C. Land Purchase	Direct land purchase from private land owners Use triparte agreement to purchase public lands using private purchases in exchange for natural resource agency land	The purchase to land will make all land use decisions come under military needs and management	Congress is not in the mood to purchase large tracts of land to be placed in federal ownership Environmental and other activist groups will likely protest large federal land purchases.
D. Land Exchange	Through existing authorities, obtain lands through bilateral and triparte exchanges May include some exchange of funds.	Process involves cooperative efforts among agencies. Could involve third parties with political and public support strength	Would likely not include all desirable lands Would require development of individual environmental statements Resistance anticipated from environmental groups
E Land Lease Agreements	A payment of a fee or valued services would provide use of land over a specific period of time with environmental safeguards and limitations.	Initial Environmental Statement likely required with yearly operating plans and environmental analysis Ownership remains with leasing agency	Use by public for recreation would become an issue Would likely not include all desirable lands
F Land Use Permit	A relatively simple permitting process that establishes the requirements of the permittee to use specific land for a set period of time	The land use permit can be implemented at the field level and permit conditions agreed upon at the field level	Agencies are not going to be interested in giving away the use of land without something in exchange Conditions of the permit could be excessive
G Memorandum of Understanding	A somewhat informal agreement between parties for mutual benefits Would include intent, safeguards, and process in case of disagreement	Simplifies process to a local basis Ownership of land and general management decisions would remain with the agency E S needed only with significant impacts	Problem could result in agency cancellation of the memorandum Some resistance from environmental groups Capital investment in property would be risky
H No Change (Status Quo)	Continue with present lands	Eliminates controversy	Severely limits realistic training opportunities

1.7 Approach Rationale

The federal land managing agencies will defend the integrity of the lands under their management in an aggressive manner. This is especially true on lands east of the Mississippi where federal land holdings are sparse and the military has great need for additional training lands. Unlike the military, when an order (Executive Order) comes from the commander-in-chief or agency head, many within an agency will resist the order with enthusiasm. Because of the widespread nature of the federal land managing agencies, they have developed a very large and powerful constituency. Through third parties, they can bring to bear a great deal of political power and public support. A heavy-handed approach will have a strong likelihood for failure.

When the federal resource management agencies determine there are positive benefits for them, they will be willing and even enthusiastic about cooperation. The major emphasis of a cooperative land use program should be that of environmental protection, economic efficiency, and mutual benefits. The resource agencies simply will not provide the military with training lands without receiving significant benefits in return, or being legally mandated through a legislative initiative.

An initial meeting at the very highest level in government, specifically from the Army Chief of Staff, Chief of the Forest Service, and Director of the Bureau of Land Management, could pave the way for local agreements. Local agreements, particularly memorandums of understandings, provide the most viable method to start the process. If the local agreement initiative does not appear fruitful, it would then be appropriate and politically sound to accomplish tasks through legislative initiatives.

1.8 Examples of Programs

Legislative Programs—In 1956, Congress passed the “Interchange With the Department of Defense Act” (70 Stat. 656 as amended in 1988 by 102 Stat. 1091) which provided authority for the DoD and the Forest Service to exchange lands and interests in land. This unique legislation gave congressional approved “blessings” on land exchange between the two government entities. The exchanges under this legislation do not require equal acreage or equal values of lands. In 1991, legislation was passed giving the Pinon Canyon area in Fort Carson, Colorado to the Pike National Forest. This occurred after a unsuccessful and somewhat controversial attempt by the military to acquire Forest Service land near Camp Shelby, Mississippi.

Land Exchange (better referred to as “interchange”)—In 1981, the Forest Service exchanged 17 acres within the National Forest for 20 acres of U.S. Air Force Academy lands. The land exchange enhanced the resource work of the Forest Service and the training/education requirements of the Air Force Academy.

Memorandum of Understanding—In 1988, a master agreement was signed by the Secretary of Agriculture, representing the Forest Service, and the Secretary of Defense that provides the basis for local military commanders and National Forest officers to negotiate the basis on which the

military uses resource land for training. This master agreement has been used many times to develop local memorandums of understanding that provide for the mutual benefits of both the military and Forest Service.

Land Lease Agreements—There is no indication that land lease agreements have been used by resource agencies to facilitate military needs; however, there is no identified technical barriers that would limit that possibility. It is common practice for the military to lease land from private landowners for military purposes.

1.9 Present Statutory Authority

The following is a list of statutory authorities that provide a basis for land exchanges and use authorizations between the DoD and the USDA-Forest Service/USDI-Bureau of Land Management. Statutory authority, federal regulations, and agency policy is outlined with reference to leases, permits, rights-of-way, and easements relevant to the BLM and Forest Service.

1.10 Exchange of Land and Interests in Land

United States Forest Service—The Forest Service has statutory authority to exchange its lands with both public and private entities. This authority, however, is not as comprehensive as BLM exchange authority.¹ A number of separate statutes provide the Forest Service with authority to exchange a specific class of land under its jurisdiction. Therefore, the status of the land will generally determine the specific exchange Act that is applicable. The following is a list of relevant exchange statutes.

- Interchange with Department of Defense Act of July 26, 1956, as amended (70 Stat. 656, 16 U.S.C. 505(a), 505(b)).
- Section 206 of FLPMA (43 U.S.C. § 1716 [1982]).
- Federal Land Exchange Facilitation Act (FLEFA) (P.L. 100-409 [1988]).
- General Exchange Act of 1922 (16 U.S.C. § § 485, 486 [1982]).
- Department of Agriculture Organic Act (7 U.S.C. § 428a[a] [1982]).
- Forest Service Omnibus Act (16 U.S.C. § 555a [1982]).
- Weeks Act of 1911 (16 U.S.C. § 516 [1982]).
- Bankhead-Jones Farm Tenant Act (7 U.S.C. § 1011© [1982]).
- Small Tracts Act (16 U.S.C. § 521d [1982]).

Specific statutory authority exists for the exchange of land and interests in land between the Forest Service and the DoD.² This authority is the result of a law passed in 1956. The notebook contains the statute, its legislative history³, and two references to the law in the Forest Service Manual. Section 5452.2 of the Forest Service Manual contains an OGC interpretation. The following

is a summary of its key components. An exchange/interchange⁴ of land or interests in land between the Forest Service and the DoD can be made when:

- The DoD land lies within or adjacent to the exterior boundaries of a National Forest System unit.
- The exchange complies with provisions of the FPASA (40 U.S.C.A. § 471 et seq)
- The exchange will facilitate land management⁵.
- The exchange will provide maximum use for authorized purposes.

The law does not require an exchange for land of equal value or equal acreage. The statute also states which laws will apply to the party to which the lands are transferred. Where National Forest Lands are transferred to a DoD:

- The land will be subject only to the laws applicable to other lands within the military installation.

Where DoD lands are transferred to the Forest Service

- The land will be subject to the laws applicable to the lands acquired under the Weeks Act of March 1, 1911 (the text of this law is in the notebook)

Forest Service policy concerning land transfers can be found in the Forest Service manual (FSM 5450.3[2][a-e]). This policy is contained in the supplemental notebook. The stated policy of the Forest Service is to consider land transfers when they:

- a. Consolidate National Forests
- b. Clarify administration or protection responsibilities
- c. Improve resource conservation or production
- d. Reduce administrative costs
- e. Contribute to achieving Forest Plan objectives

Bureau of Land Management—The review of statutory authority reveals that the primary authority for land exchanges between the BLM and other parties is the Federal Land Policy and Management Act (FLPMA) ⁶ The statute lists federal agencies by which the BLM is authorized to exchange lands, but does not mention the DoD. A general authorization for the DoD to use BLM lands, however, was found ⁷ In general, it allows the DoD to use BLM lands in Alaska for a variety of military purposes for no more than three years. The review did not reveal a discussion of this authority in the regulations.⁸

The review has revealed several potential obstacles to land exchanges that both parties could face. These include:

- Environmental protection requirements under NEPA⁹ and subsequent possible EIS or EA requirements.
- Meeting land use or forest management plan requirements.
- Appraisal requirements.
- Existing easements, permits, and rights of way.

1.11 Land-Use Authorizations: Leases, Permits, Easements, and Rights of Way

United States Forest Service

Statutory authority for rights-of-way on Forest Service lands is listed below. The authority is also listed in the supplemental notebook.

- Act of October 13, 1964 (16 U.S.C. § 533)
- 43 U.S.C.A. §1761 et seq.

Statutory authority also exists for easements and reservations of timber and minerals when lands have been exchanged. See:

- 16 U.S.C.A. § 486

For other uses under various conditions, see the:

- Forest Service Organic Act (16 U.S.C. 497 (1982)).
- Term Permit Act of 1915 (16 U.S.C. § 551 (1982)); & (48 U.S.C. § 341 (1982)).

Regulatory authority for rights-of-way and use permits on Forest Service lands can be found at the following citation:

- 36 C.F.R. § 251 et seq. (1984)

Agency guidance on rights of way and partial interest acquisition on Forest Service lands can be found at the following citations:

- FSM § 5400 et seq.
- FSH § 5409.13 et seq.

Forest Service guidance on leasing can be found at: FSH 6409.31, 104G-18.150—this information is not in the notebook.

Bureau of Land Management

Statutory authority for leases, permits and easements on BLM land is found in:

- Section 302(b) of FLPMA (43 U.S.C. § 1732(b) (1982)).

Regulatory authority is found in:

- 43 C.F.R. § 2920 et seq.

Some regulatory authority and procedure is found in:

- BLM Manual
- BLM Rights-of-Way Handbook

The Handbook contains a section on miscellaneous information at the end. It gives reference to a statute which provides for “property under control of a military department.”

1.12 Recommended Actions

The SAIC/Eppley Institute Team can be helpful to DoD by identifying potential training lands, facilitating discussions between agencies, helping in environmental conflicts, working with the media, and assisting the public involvement process. Implementation of the report’s recommendations will require action in the following areas:

1. Prepare an inventory of other federal and state properties that are adjacent to existing DoD training lands. Specifically, identify those areas where DoD has indicated an interest in expanding training capability. The SAIC/Eppley Team could assess the level of sensitivity associated with DoD interest in specific lands. Some lands might be made available for training of troops with a mission of stealth and “leave no trace” objectives, while those same lands would not be available for mobile equipment maneuvers. The assessment would be an effort to identify lands that may be available for military use and to disqualify lands from consideration where military training would be unacceptable by other land management agencies and the public.

It is important that DoD be sensitive to resource needs of adjacent land management agencies and be aware of potential “political” fallout associated with identifying areas considered sensitive by other agencies and the public

2. Identify and present a comprehensive portfolio of selected informal agreements between the U.S. Army and other federal land management agencies to illustrate that there are presently working agreements in effect at the field level. These sample agreements could be used to

convince reluctant field administrators that good working agreements have been made in the past—the precedent has been set. Some agreements have not been reduced to writing because of the nature of local agreements and the personal inclinations of local federal land managers. For purposes of understanding the process, we would identify those types of agreements as well as the rationale for them.

3. Arrange for a high-level meeting between DoD officials and land managing agency officials (should be at the Chief of the Forest Service and Director of the Bureau of Land Management level). A memorandum of understanding should be developed that will provide the broad basis of cooperation, as well as a review procedure when agreement on the local level cannot be reached.

A preparatory meeting among staff prior to the “summit” meeting may not be in the best interests of the land exchange program. Technical staff may tend to complicate matters in what should be an umbrella agreement that will contain guidelines and policy for the field units to negotiate on a local or regional level. Technical staff input would best be utilized at the field (local) level.

4. Provide a forum for consensus building and public understanding. The intent would be to describe a process for gaining public acceptance of agreements between the Army and other governmental land management agencies. In many cases, this will include the need to design and facilitate public meetings. It could include a process to determine the need for environmental impact analysis. The SAIC/Eppley Team is uniquely qualified to lead this effort, having years of high-level natural resources and land management experience, a strong capability of environmental analysis, and actual working experiences in field settings of negotiating for military use of other federal lands.
5. Third parties should facilitate local agreements and arrange for public involvement. In many locations, there has been long-standing management and use disagreements between resource management agencies and the DoD. Third-party involvement should provide a more objective basis for negotiations.

In most instances, a third party such as the Eppley Institute can be helpful in facilitating the negotiations and hosting public hearings on agreements. The neutrality and the resource protection reputation of the Institute sends a positive signal to the public.

ENDNOTES

- ¹ The BLM's statutory authority for land exchanges is governed primarily by a single statute (section 206 of the Federal Land Policy and Management Act of 1976[FLPMA]).
- ² See Interchange with Department of Defense Act of July 26, 1956, as amended (70 Stat 656; 16 U.S.C. 505(a), 505(b)).
- ³ The legislative history contains examples of Forest Service and DoD land exchanges albeit, pre-1956.
- ⁴ The statute uses the term "interchange" instead of "exchange." The Office of General Counsel of the Department of Agriculture (OGC) has interpreted this term in FSM 5452.2
- ⁵ This is an objective of the Forest Service as stated in the FSM 5450.2 (2)(a).
- ⁶ 43 U.S.C.A. § 1712 et seq.
- ⁷ 43 U.S.C.A. § 1732.
- ⁸ See 43 C.F.R. Subpart 2200 for a general discussion of exchanges.
- ⁹ National Environmental Policy Act of 1969; Pub. L. No. 91-190.

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